

DAVID H. BECKER (OSB # 081507)  
Law Office of David H. Becker, LLC  
833 SE Main Street # 302  
Portland, OR 97214  
(503) 388-9160  
davebeckerlaw@gmail.com

Attorney for Plaintiff Native Fish Society

PETER M.K. FROST (OSB # 91184)  
Western Environmental Law Center  
1216 Lincoln Street  
Eugene, OR 97401  
Tel: (541) 359-3238  
Fax: (541) 485-2457  
frost@westernlaw.org

Attorney for Plaintiff McKenzie Flyfishers

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF OREGON**  
**PORTLAND DIVISION**

**NATIVE FISH SOCIETY,  
MCKENZIE FLYFISHERS,**

Plaintiffs,

v.

**NATIONAL MARINE FISHERIES  
SERVICE, PENNY PRITZKER,  
Secretary of Commerce, WILLIAM STELLE,  
Regional Administrator, NMFS, OREGON  
DEPARTMENT OF FISH & WILDLIFE,  
ROY ELICKER, Director, ODFW,  
BRUCE McINTOSH, Acting Fish  
Division Administrator, ODFW, CHRIS  
WHEATON, Northwest Region Manager,  
ODFW,**

**Case No.: 3:12-cv-431-HA**

**DECLARATION OF JOHN R.  
MELLGREN IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
ATTORNEYS' FEES AND COSTS**

Defendants.

---

I, John R. Mellgren, hereby declare:

1. I am an attorney licensed to practice law in Oregon since 2011. I am a member of the bars of the State of Oregon, the United States District Court for the District of Oregon, the United States Court of Appeals for the Ninth Circuit, and the United States Court of Appeals for the Tenth Circuit. I received my undergraduate degree from the University of Michigan in 2005 and my law degree from the University of Oregon School of Law in 2011. From 2005-2007, I was a Legislative Aide, and later Deputy Legislative Director, for Michigan State Senator Raymond E. Basham, where I worked on environmental and natural resources issues.

2. At the University of Oregon School of Law, I focused my studies on environmental law and litigation, and was awarded a Statement of Completion in Environmental and Natural Resources Law. For the 2009-2010 academic year, I was selected to serve as a fellow in the Environmental & Natural Resources (“ENR”) Law Program. I was subsequently selected to serve as a Bowerman Fellow in the ENR Program for the 2010-2011 academic year. Through the Bowerman Fellowship, I received funding to complete research related to the public trust doctrine and its application to the atmosphere. I was a staff editor (2009-2010) and articles editor (2010-2011) for the Journal of Environmental Law and Litigation. I also conducted environmental legal research while serving as a research assistant for Professor Mary Wood (2009-2011). Additionally, I was hired by former Oregon Attorney General Dave Frohnmayr to serve as his teaching assistant for a State Administrative Law course he taught at the University of Oregon School of Law (2011).

3. While at the University of Oregon School of Law, I served as a law clerk for several organizations working exclusively in environmental law. From May 2009-August 2009,

I worked as a law clerk for Fiscalía del Medio Ambiente, a nonprofit public interest environmental law firm in Santiago, Chile. From September 2009-April 2010, I served as a law clerk in the Office of the Attorney General in Salem, Oregon where I worked exclusively on environmental litigation arising under the Clean Air Act, Clean Water Act, National Environmental Policy Act, and Oregon State environmental laws. From May 2010-August 2010, I served as a law clerk for Earthjustice, a nonprofit public interest environmental law firm in Oakland, California, where I worked exclusively on environmental litigation. From October 2010-October 2011, I served as a law clerk for Our Children's Trust, a nonprofit organization in Eugene, Oregon where I worked on various environmental litigation projects, including legal research and brief writing for an environmental law case filed in the Northern District of California.

4. Since November 2011, I have been an attorney at the Western Environmental Law Center, a nonprofit public interest law firm with eight attorneys in three offices. In April 2013, I was promoted from Project Attorney to Staff Attorney. I litigate primarily in federal court, but also litigate on a limited basis in state courts. I exclusively represent public interest clients in environmental litigation. Beginning in January 2012, I began supervising law students enrolled in the Environmental Law Clinic at the University of Oregon School of Law. Since August 2012, I have served as an adjunct faculty member at the University of Oregon School of Law where I co-teach the Environmental Law Clinic. I have spoken as a panelist on several Continuing Legal Education seminars for attorneys in Eugene, Oregon, on environmental litigation, including seminars on environmental litigation related to the atmosphere (March 2012), litigation related to the wolverine (March 2013), and federal litigation in Oregon related to suction dredge mining (March 2013).

5. Through my legal experience in law school and in the nearly three years since I became a member of the Oregon Bar, I have developed distinctive knowledge and skills related to the specialized practice area of federal environmental litigation, and those skills were needed in this case. Since joining the Western Environmental Law Center, I have actively worked on at least fourteen federal environmental cases related to activities on federally owned public land. I am counsel of record serving as either lead counsel or co-counsel and currently actively litigating a number of those cases in the District of Oregon, Northern District of California, District of Montana, District of Arizona, District of New Mexico, Ninth Circuit Court of Appeals, and Tenth Circuit Court of Appeals. I have secured successful results for my clients and published decisions from the United States District Court for the District of Oregon in *Cascadia Wildlands v. U.S. Forest Serv.*, 937 F. Supp. 2d 1271 (D. Or. 2013); from the United States District Court for the District of Montana in *Friends of the Wild Swan v. Ashe*, -- F. Supp. 2d --, 2014 WL 1870370 (D. Mt. May, 8 2014); and from the United States District Court for the District of New Mexico in *New Mexico Off-Highway Vehicle Alliance v. U.S. Forest Serv.*, Case No. 12-cv-01272 (D. NM. July 25, 2014). I have also secured successful results for my clients from the Tenth Circuit Court of Appeals in *New Mexico Off-Highway Vehicle Alliance v. U.S. Forest Serv.*, 540 Fed. Appx. 877, Case No. 13-2116 (10th Cir. Nov. 8, 2013).

6. My timesheets for this case are attached to this declaration as Exhibit 1. I track my time on a daily basis, in increments of six minutes, using a computer program called Timeslips. I have omitted time that I think would be inappropriate to bill to a client or that I believe to be non-compensable under the Endangered Species Act or Equal Access to Justice Act.

7. I am familiar with the hourly rates for attorneys who practice federal environmental law in Portland. I have discussed rates with attorneys in law firms who litigate in the field of federal environmental law in Portland. I am seeking hourly rates of \$200 for work performed in 2012, 2013, and 2014. I believe that the rates that I seek are consistent with the fair market value for my services in this forum. My involvement in this matter allowed legal services to be provided at a lower overall cost than if more senior attorneys at the Western Environmental Law Center with significantly higher hourly billing rates had handled this matter on their own.

8. To evaluate reasonable hourly rates, the Practice Tip to LR 54-3 requires the Court to consider the most recent Oregon State Bar Economic Survey. According to the 2012 OSB Survey, “Real Estate/Land Use/Environmental Law” attorneys in Portland on the average charge \$332 per hour, in the 25% percentile charge \$261 per hour, in the 75th percentile charge \$396 per hour, and at the 95th percentile charge \$500 per hour. For lawyers practicing 0-3 years, like me, lawyers in Portland on the average charged \$182 per hour in 2012, in the 25% percentile charge \$163, in the 75th percentile charged \$198 per hour, and in the 95th percentile charged \$246 per hour.

9. The lead counsel in this case, David Becker, has explained that these 2012 OSB Survey rates might be adjusted to 2014 rates using the Ninth Circuit’s cost-of-living adjusted lodestar figures to account for inflation between 2012 and 2014 with an adjustment factor of 1.03. Declaration of David H. Becker (filed contemporaneously) ¶¶ 26–28. Thus, for example, the 2012 Survey’s average rate of \$332 per hour for attorneys practicing “Real Estate/Land Use/Environmental Law” adjusts to \$341.96 per hour in 2014, and the 2012 Survey’s 75th percentile rate of \$198 per hour for attorneys with 0-3 years of experience adjusts to \$203.94.

Thus, my 2012, 2013, and 2014 hourly rate of \$200 falls well below the average, and below the 25% percentile, for attorneys working within the “Real Estate/Land Use/Environmental Law” practice area, and at about the 75th percentile rate for all attorneys with 0-3 years of experience, according to the 2012 OSB Survey. This is reasonable for someone of my experience and reputation.

10. In my experience practicing environmental law, I know that cases of this type are risky, and many attorneys will not undertake them, because the chance of recovering attorneys’ fees is unpredictable, and any recovery may come long after the work is done. The unpredictability and delay in recovering fees means that many attorneys will not or cannot afford to take these cases. Clients who seek attorneys to undertake these kinds of cases often have a hard time finding able and experienced attorneys. Consequently, these attorneys are in demand. For example, the Western Environmental Law Center has a large docket, but we still turn away many prospective cases, because we cannot meet the demand for our services.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Date: October 1, 2014.

/s/ John R. Mellgren

John R. Mellgren, OSB #114620

# **EXHIBIT 1**

<b>Attorney:</b>	<b>John R. Mellgren</b>					
<b>Case:</b>	<i>Native Fish Society v. National Marine Fisheries Service</i> , 12-431-HA (D. Or.)					
	<b>TIME SOUGHT FROM FEDERAL DEFENDANTS (AS OF 10/3/14)</b>					
<b>Date</b>	<b>Description</b>	<b>Hours Spent</b>	<b>Hours Req'd</b>	<b>Rate</b>	<b>Amount Incurred</b>	<b>Amount Charged</b>
	<b>2012</b>					
11-Apr	Discuss Sandy Hatchery ESA case with Pete Frost	0.40	0.40	200	80.00	80.00
16-Apr	Discuss Sandy Hatchery with Pete Frost; strategize upcoming division of work	0.30	0.30	200	60.00	60.00
24-Apr	Email with Nick Klingensmith re potential plaintiffs for Sandy	0.10	0.10	200	20.00	20.00
24-Apr	Phone Call with Dave Becker and PF re strategy for upcoming Rule 26 conference call	0.60	0.60	200	120.00	120.00
24-Apr	Conference Call with Dave Becker, PF, opposing counsel re timing schedule, discovery, motion to dismiss	0.90	0.90	200	180.00	180.00
24-Apr	Phone call with Dave Becker, debrief after conference call with opposing counsel	0.30	0.30	200	60.00	60.00
26-Apr	Phone conference with Judge Haggerty, Dave Becker, PF, opposing counsel re discovery schedule	0.50	0.50	200	100.00	100.00
26-Apr	Phone call with PF re discover conference call with Judge Haggerty	0.10	0.10	200	20.00	20.00
26-Apr	Read and respond to email from Dave Becker re conference call with Judge Haggerty re discovery	0.10	0.10	200	20.00	20.00
8-May	Research McKenzie River flysher standing statement	0.60	0.60	200	120.00	120.00
8-May	Email Dave Becker re McKenzie Flyfishers joining lawsuit	0.10	0.10	200	20.00	20.00
8-May	Phone call with Pete Frost re McKenzie Flyfisher joining lawsuit	0.20	0.20	200	40.00	40.00
9-May	Review emails from Dave Becker and opposing counsel re motion to stay	0.60	0.60	200	120.00	120.00
11-May	Review misc. emails from Dave Becker and opposing counsel re defendant's motion to stay proceedings	0.50	0.50	200	100.00	100.00
14-May	Review email from Dave Becker re Motion to Stay and attached briefing	0.70	0.70	200	140.00	140.00
16-May	Review emails from Dave Becker to opposing counsel re discovery requests, including discovery request attachments	1.30	1.30	200	260.00	260.00
22-May	Review motion to dismiss, motion for extension of time, and associated emails	0.80	0.80	200	160.00	160.00
29-May	Review emails re stay of proceedings and discovery from Dave Becker, and USDOJ, ORDOJ responses	0.50	0.50	200	100.00	100.00
30-May	New Matter mtg with Greg, Pete, Russa, Hillary re Sandy hatchery	0.50	0.50	200	100.00	100.00
4-Jun	Review emails re stay of proceedings and conferral	0.50	0.50	200	100.00	100.00



27-Jun	Prep for mtg with McKenzie Flyfishers, PF, Dave Becker, NFS re comments and litigation strategy	0.50	0.50	200	100.00	100.00
27-Jun	Mtg/Conference call with McKenzie Flyfishers, PF, Dave Becker, NFS re NMFS HGMS comments and litigation strategy	1.00	1.00	200	200.00	200.00
24-Jul	McKenzie River - mtg with PF to discuss case work up	0.30	0.30	200	60.00	60.00
17-Oct	Amended Complaint: review and edit amended complaint	1.80	1.80	200	360.00	360.00
	<b>2012 Total</b>	<b>13.20</b>	<b>13.20</b>		<b>2,640.00</b>	<b>2,640.00</b>
	<b>2013</b>					
18-Mar	Review Judge Haggerty questions for oral argument; strategy mtg. with PF	0.40	0.40	200	80.00	80.00
	<b>2013 Total</b>	<b>0.40</b>	<b>0.40</b>		<b>80.00</b>	<b>80.00</b>
	<b>2014</b>					
9-Apr	Research claim dismissal case from 9th circuit for PF	0.30	0.30	200	60.00	60.00
11-Sep	Draft fee declaration [1.1]; mtg w PF re fee motion strategy [.2]	1.30	1.30	200	260.00	260.00
29-Sep	Edit and update fee declaration [0.5]; legal research re fee recovery in D.Or [0.7]	1.20	1.20	200	240.00	240.00
1-Oct	Review fee declaration edits [0.1]; email to DB re fee declaration [.1]	0.20	0.20	200	40.00	40.00
	<b>2014 Total</b>	<b>3.00</b>	<b>3.00</b>		<b>600.00</b>	<b>600.00</b>
<b>Date</b>	<b>Description</b>	<b>Hours Spent</b>	<b>Hours Req'd</b>	<b>Rate</b>	<b>Amount Incurred</b>	<b>Amount Charged</b>
	<b>2012 + 2013 + 2014 Totals:</b>	<b>16.60</b>	<b>16.60</b>		<b>3,320.00</b>	<b>3,320.00</b>
	<b>Hours Excluded:</b>		<b>0.0</b>			